the defendant. The defendant, however, was defended by counsel, who was perfectly well aware of this and, in fact, raised the same objection before the Magistrate. I do not think there is any substance in this point.

There is, however, a more fundamental objection which goes to this knowledge, and which is essential to raising the presumption referred to: the unsatisfactory evidence of possession of a still. In this case, what the prosecuting officer properly described as a tank, a vessel resembling a bitumen drum, a piece of piping and a vessel described as a "frying pan", both by the prosecution and defence, were produced. They were found in different parts of the defendant's house and out-house. The principal evidence that they are a still seems to come from Yahya bin Junid, who states: "I know it is a still as there is a hole in the vat and also a mark inside the vat." In cross-examination, he stated: "In my experience the frying pan has always been used as a condenser." Where the still is all of a piece, or is manufactured, or even labelled, as such by the maker, it may be sufficient to produce the article and refer to it as a still. A still may, however, be made from a common kettle and a piece of rubber tubing, or even from a kettle and some cold body. An efficient still, however, would seem to require complete control of the vapour. The retort produced in this Court had no head at all. With the hole referred to, any heavy plate might serve the purpose, but the outer rim is at present bent and the hole is 7" below the head. What is meant by the second quotation from Yahya I cannot clearly understand. An efficient condenser would seem to be a cooling chamber mainly enclosed. A frying pan might be used as a receptacle for the distillation, and so might any other household vessel.

It is not for the prosecution to put witnesses in the box to give matters of opinion, but to state facts on which the Court can make the necessary finding. The learned Magistrate said in his Grounds of Judgment: "I believed that the accused knew of the existence of the seemingly useless broken handle of the supposed water ladle and that it should fit the hole in the still vat confirmed my belief that the exhibits formed a still." What the words following "vat" mean, or what the sequence of thought is, is not clear. What the prosecution had to prove was that the articles were in fact a still for distilling intoxicating liquor upon which it was for the defence to shew if they could that this was not within their knowledge. There should be clear demonstration that the articles found form a still for distilling intoxicating liquor. That the articles had been used for distilling would afford *prima facie* evidence.

The mere fact that a raid was made upon the defendant's house would seem to indicate that the prosecution had more evidence than they chose to call. The second quotation from Yahya apparently means the same. The prosecution may not be bound to disclose their source of information, but if they do not give all the evidence available they are not likely to be successful except in very clear cases.

I do not think there is any sufficient evidence given to prove the alleged nature of these articles. The appeal, therefore, will be allowed and the conviction quashed.

Appeal allowed.

ANG EE LOCK v. SNG CHENG SIONG

[O. C. J. (Murray-Aynsley C.J.) June 22, 1948]

[Singapore — Civil Suit No. 319 of 1947]

Partnership — Claim to be a partner — Laches.

In this case the plaintiff had been a partner of the defendant in the business of Chop Heap Chuan from June 1st 1941 till early in 1942, when the active operations of the business ceased. During the Japanese occupation and afterwards till September 1947 the premises were occupied by sub-tenants and while the defendant brought a number of actions to recover possession the plaintiff remained quiet. It was only in August 1947, after an order for possession of the premises had been obtained by the defendant, that the plaintiff made a claim to be a partner in the Chop.

Held: the plaintiff in this case was guilty of laches and therefore it would be inequitable to make an order in his favour.

Case referred to:—

(1) *Lindsay Petroleum Co. v. Hard* (1874) L.R. 6 P.C. 239.

ACTION.

R. H. Green for the plaintiff.

N. A. Mallal for the defendant.

Murray-Aynsley C.J.: — This case arises out of a partnership. From June 1st, 1941, the plaintiff and the defendant carried on business under the style of Chop Heap Chuan, at No. 250 Rochore Road in this city. The business transacted was never extensive and active operations came to an end early in 1942. On April 26th, 1942, the premises were sub-let apparently at the same rent as that payable by the chop and for the time being nothing further happened. According to the defendant an express agreement in writing was made by the parties providing for the dissolution of the partnership on the terms that the defendant should take over both the assets and the liabilities. This agreement, which would conclude the matter, is missing.

The whole thing is denied by the plaintiff and I find myself unable to find as a fact that such an agreement was made.

Later it is certain that the defendant registered himself as proprietor of the chop under the legislation providing for the registration of business names on August 1st, 1944. About the same time he also took steps to recover the premises in Rochore Road, and obtained an award from Chinese arbitrators by which the sub-tenants were to hand back the premises at the end of the current (Chinese) year. The sub-tenants did not comply with the award. There also seem to have been abortive proceedings in the District Court and the Supreme Court during the Japanese occupation.

After the re-occupation the defendant was involved in long drawn out proceedings before the Rent Board and finally on August 1st, 1947, obtained an order giving him possession on or before September 30th of that year. This was followed by unsuccessful certiorari proceedings by the sub-tenant. The defendant had the books of the chop in his possession. According to the plaintiff he obtained them by coming to where the plaintiff resided accompanied by a Japanese. The defendant denied this. I am unable to find as a fact that the episode described by the plaintiff occurred.

The plaintiff had remained quiet all the time and the only part he played in all these proceedings was to give evidence (on subpoena) on behalf of the sub-tenant in the Rent Board proceedings. On August 7th, 1947, which may be considered a significant date, he, for the first time, through his solicitors made a claim to be still a partner in the chop, Heap Chuan.

The defendant set up two defences to this claim. One, an express and formal agreement, which I have already disposed of. The other is the equitable defence of laches which gives rise to serious questions.

The equitable defence of laches primarily only applies to purely equitable claims that is, claims which were not subject to any statutory period of limitation. Its theoretical basis seems to have been that long delay in bringing a claim enabled the Court to draw an inference that the claim has been abandoned. Where there was a statutory period or where a period analogous to a statutory period was applied by the Courts of equity, this had no application. On the other hand, the term 'laches' was used not to denote mere inaction, but what was called acquiescence, not very happily. This meant conduct which led the other party to believe the claim did not exist or had been abandoned, and so led him to alter his position to his prejudice. This would, in the sphere of the common law, have formed the basis of an estoppel. This formed a defence to both legal and equitable claims.

I think that the judgment of the Privy Council in *Lindsay Petroleum Co. v. Hard*[1] may be considered as good a statement in general terms as any. The following passage occurs :—

> . . . . the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practicably unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which would otherwise be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

In this case, as in all other partnership actions although the basis of the action is a contractual one arising from the contract of partnership, yet the plaintiff is obliged to seek an equitable remedy because of technicalities of procedure of English Law. Therefore, the remedy which he seeks is a discretionary one. On the subject of laches as applied to partnership actions in particular there is a lack of modern authority and it is not easy to reconcile the cases. However, certain considerations must be applied, particularly when the partnership is a trading one. In particular, the application must be flexible enough to deal with the sort of person who keeps quiet until he can assert his rights without risk of loss. In the case of a business of a speculative character a delay of a few days, in certain circumstances, might render it inequitable to make an order in favour of such a fair-weather partner.

In the present case I think it would be unfair to blame the plaintiff for anything that he did not do during the Japanese occupation. But we have to face a delay of nearly two years after that ceased before the plaintiff took any steps in the matter. I feel certain that if the proceedings taken against the sub-tenant had terminated differently nothing would have been heard about the claim. Before the proceedings terminated I think that the plaintiff was quite content to forget all about the chop. In the circumstances I consider that it would be inequitable to make an order in favour of the plaintiff.

The action is, therefore, dismissed with costs.

Action dismissed.